Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	MB Docket No. 04-228

To: The Commission

COMMENTS OF VENTURE TECHNOLOGIES GROUP, LLC

Venture Technologies Group, LLC ("VTG") hereby submits the following Comments in response to the Commission's Third Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced proceedings, FCC 07-217, released March 5, 2008.[1]

VTG has built a dozen of LPTV, Class A and full power TV stations. As such, it brings a unique knowledge to the difficulties of start up operations.

[1] The deadline for filing Comments was extended to July 30, 2008, in DA 08-1359, released June 16, 2008.

A. Definition of Socially and Economically Disadvantaged Businesses

1. All branches of government have had a long history of poorly designing and managing race-based entitlement or benefit programs. The failure of these programs is that they have not utilized classed based definitions of their proposed beneficiaries but rather race based definitions. Moreover, recent history indicates that the any such attempt to reinstate race based programs will be thrown out by the courts. If the Commission goes back to race based definitions of socially and economically disadvantaged businesses, it will be creating a program that is designed to fail. Alternative definitions, such as those proposed by DCS, which would require "full file" review are ludicrous, inviting Orwellian constructs from an "independent, politically insulated professional entity" to measure and quantify "overcome[ing] significant social and economic disadvantages." It is the Commission's responsibility to govern broadcast licenses – not an independent board, answerable to no one. Moreover, has anyone either inside or outside of the beltway really believe that an independent board would be anything but political?

B. Share-Time Proposals

2. DCS has proposed that FM licensees share time. This is not a solution. The solution is to have FCC licensees, not tenants and customers for existing licensees.

E. Structural Rule Waivers for Creating Incubator Programs

3. The proposal of DCS for additional rule waivers to the local broadcast ownership limits will actually create fewer broadcasters, not a group of more diverse broadcasters. It is basically a way for the few large radio groups to get around the rules that limit ownership in a single market, and it will be successful at that if it is incorporated into FCC rules. Before adopting this program, the Commission can easily discover who the true beneficiaries of the program would be – the handful of companies that are already at the maximum number of radio stations they can own in a market. This program won't create more diversity; it will in fact decrease the amount of diversity. Moreover, any program that is designed around giving temporary waivers is based in a false premise. The Commission has rolled over "temporary" waivers for years and years. The Commission should not set up a program in which on day one we will know that additional waivers will be required.

Alternatively, the Commission should allow small market television stations to become duopolies as long as the emerging entities are not the top four rated stations in the market. However, the threshold number of stations in smaller markets should be lowered from right

stations to five stations.

F. Opening FM Spectrum for New Entrants

4. We have no objection to opening the FM for new entrants, and if it is determined that it is good social policy to allow stations to change their community of license such a policy should be adopted. However, there is no point in requiring a station that does such a change to be required to finance a new LPFM service. That is nothing but a tax, not a progressive policy.

G. Must Carry for Class A Stations

5. LPTV and Class A television have been the most successful programs for creating diversity in ownership in the history of the FCC. During the last 28 years the Commission has created policies or seen policies eroded, allowing less diversity in media. Now a handful of very large multinational corporations control most of the electronic media in this country. Because they have been such ugly stepsisters to full power television broadcasters, LPTV and Class A stations have largely been ignored by the large group media companies. In such an environment, LPTV and Class A licensees have scratched out local niches. Thus, today the ugly stepsisters of broadcasting have the highest ratio of minority and female ownership of any class of broadcast licensees.

LPTV and Class A stations have been around for almost three decades. During this time, the Commission has allowed for the radical decrease in the number of television station owners, radio station owners, telephone companies, cable companies, cellular telephone companies, and now, most recently, the number of satellite radio companies. During this time, Class A station gave a permanency to LPTV facilities. However, with that permanency came tremendous local obligations that are greater than any other broadcast service. The Commission is correct in its conclusion that because Class A stations are required to originate local content, they are the best tool to promote program diversity and localism.

We believe the Commission should begin accepting Class A transition applications from LPTV stations commencing on February 18, 2009, immediately after the transition date of full service television. Rather than accept such applications for only a short window of time, the Commission should allow for such applications to be filed at any time after that date provided that the licensee of the LPTV station meets the criteria of Class A stations at the time of the application filing.

We agree that the Commission does not have the authority to require must carry for Class

A station as long as they are Part 74 governed and not on the Table of Allotments. Therefore, the Commission should begin accepting petitions to add to the Table of Allotments immediately from Class A operators to become permanent television assignments governed pursuant to Section 73.622 of the FCC rules. Because they will already be permanent facilities as Class A stations in their communities and on their channels, they will be the only participant able to apply for the newly allotted facility should it be added to the Table of Allotments. Moreover, this will further spur the evolution of LPTV and Class A stations from analog to digital because only digital facilities would be proposable for addition to the Table of Allotments. Once they are permanent assignments on the Table of Allotments, digital Class A stations will be eligible for must carry.

Additionally, by allowing Class A stations to migrate to Part 73 and the Table of Allotments, the Commission will be able to solve a longstanding issue for LPTV, Class A, and noncommercial TV stations – lack of network, and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules. By failing to provide such rules, LPTV, Class A and noncommercial TV stations are unable to fairly bargain for and exercise program exclusivity against other broadcast stations and cable systems and the private contractual marketplace is not operated on a on open and level playing field. This item was proposed first by the Commission in 1988, and petitioned for again in 2001 (RM-10335). However, it has inexplicably sat unattended to at the Commission. See ***Attachment 1***, a date-stamped copy of the Petition for Expedited Rulemaking filed by VTG on October 23, 2001.

When it last examined its program exclusivity rules in its 1988 Further Notice of Proposed Rulemaking, the Commission noted that it was "appropriate to extend the exclusivity rights of the existing rules . . . to all station types. . . ."[2] However, the Commission never acted upon that rulemaking.

The Commission has found that "the network non-duplication rules protect is the local advertising and public service announcements within and adjacent to network programming. . . . The main purpose and effect is to allow the local affiliates to protect their revenues in order to make them better able to fulfill their responsibilities as licensees of the Commission."[3] Further, the "network non-duplication rule was originally designed to permit the formation and

[2] Id. at ¶ 44.

[3] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 48.

continuation of broadcast networks. There is evidence that importation of duplicating network signals can have severe adverse effects on a station's audience."[4]

The reasons why the network non-duplication rule was enacted in 1988 are equally valid for all stations, not just full-power stations, and the Commission has already recognized this fact. "[T]he private organization of networks is an efficient method of doing business, and that it is in the public interest to allow enforcement of reasonable exclusivity to support that method of distribution."[5] "We have also determined that, similar to syndicated programming, the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-duplication protection."[6] Indeed, the Commission has acknowledged that low-power television stations "can be expected to have the same basic need for and interest in program exclusivity as full service stations."[7] The time has come for the Commission to resolve this unfinished business and provide all broadcast stations with equal protection from the exclusivity rules.[8]

The only question the Commission left unresolved in its 1988 Further Notice of Proposed Rulemaking that proposed to extend the program exclusivity rules to all stations was whether low-power stations "should be afforded the same degree of geographic exclusivity protection as full service stations."[9] VTG strongly urges the Commission to provide all stations the same degree of geographic exclusivity protection. Broadcast networks have a vested interest in maximizing their coverage and, accordingly, will provide exclusivity to an affiliate only when it serves that purpose. As noted earlier, "the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-

[4] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 117.

[5] Id. at ¶ 116.

[6] Id. at ¶ 118.

[7] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 44.

[8] While the primary thrust of this Petition focuses on the network non-duplication rule, VTG believes its arguments herein apply equally to the network and non-network territorial exclusivity and syndicated exclusivity rules that have also remained unacted upon by the Commission since 1988. Accordingly, VTG requests that the Commission address them in its Notice of Proposed Rulemaking.

[9] Id. at ¶ 44.

duplication protection."[10] Market forces, rather than abstract mileage constraints, are more efficient in determining proper geographic restrictions.

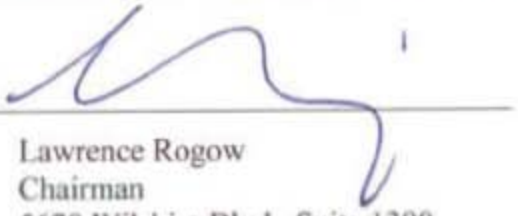
For the aforementioned reasons, VTG respectfully urges the Commission to revise its program exclusivity rules, including its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules, so that all television broadcast stations (full, low-power, class A, and noncommercial stations) are entitled to bargain for and exercise program exclusivity against other broadcast stations and cable systems.

H. Reallocation of TV Channels 5 and 6 for FM Service

6. Sometimes the cure is worse than the disease. Taking away channels 5 and 6 from television broadcasters and LPTV and Class A broadcasters would be a disaster for the operators on those channels. Equally important, is whether adding all these channels would ruin the market for IBOC digital radio. If the radio universe is radically opened up with more stations at a time when existing radio stations are trying to roll out different IBOC channels and the entire radio industry is suffering in a shrinking market, such an action actually spell disaster for minority and foreign language broadcasters. Foreign-language broadcasters are generally the weakest entity in a given market. If the market is flooded with new entrants, their entire financial model will be ruined. The end result will be greater consolidation, not less; more homogenous radio, not more diverse; less local radio, not more monolithic.

Respectfully submitted,

VENTURE TECHNOLOGIES GROUP, LLC

By: 

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July 31, 2008

[10] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 118.

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Petition for Rulemaking to amend the Commission's Rules to extend its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules to low-power, class A, and noncommercial broadcast stations	))))))	MM Docket No. _____

Petition for Expedited Rulemaking

Venture Technologies Group, LLC ("VTG") hereby urges the Commission to revise its program exclusivity rules, including its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules,[1] so that all television broadcast stations (full, low-power, class A, and noncommercial stations) are entitled to bargain for and exercise program exclusivity against other broadcast stations and cable systems.[2] Effectively, VTG is requesting that the Commission permit the private contractual marketplace to operate freely and on a level playing field.

When it last examined its program exclusivity rules in its 1988 Further Notice of Proposed Rulemaking, the Commission noted that it was "appropriate to extend the exclusivity rights of the existing rules . . . to all station types. . . ."[3] However, the Commission never acted upon that rulemaking. As explained below, the time has come for the Commission to eliminate the disparity in exclusivity rights amongst broadcasters.

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[1] 47 C.F.R. 76.151-161 & 47 C.F.R. 76.92-97
[2] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 44.
[3] Id. at ¶ 44.

Background

VTG's motivation to file this Petition stems from its recent acquisition of low-power television station WAWA-LP, Syracuse, New York. With its acquisition of WAWA-LP, VTG also signed an exclusive agreement with United Paramount Network ("UPN") to finally provide a UPN affiliate station in the Syracuse market.

In order to maximize its viewing audience, VTG needs cable carriage to reach the bulk of the market.[4] Accordingly, VTG approached Time Warner Cable, a division of AOL Time Warner ("Time Warner") to negotiate for cable carriage. In its initial meetings, VTG made it clear that it was willing to compensate Time Warner in exchange for cable carriage, even though other network-affiliated broadcasters are not charged for carriage and Time Warner pays for satellite-delivered cable networks that attract fewer viewers. Time Warner, however, opted to import UPN superstation WSBK out of Boston, Massachusetts over the objections of UPN.[5]

If WAWA-LP was a full-power station, it could invoke the protection of the Commission's network non-duplication rules and prevent Time Warner from importing WSBK. But WAWA-LP is a low-power station and, accordingly, cannot utilize the protection of this exclusivity rule. Effectively, Time Warner's decision to import a UPN station, without the approval of UPN, prevents VTG and UPN from reaping the benefits of the exclusive affiliation agreement that they signed.

VTG's inability to invoke the network non-duplication rule, simply because WAWA-LP is a low-power station, directly harms the citizens of Syracuse. First, without cable carriage WAWA-LP will not have an audience base large enough to justify

[4]Syracuse has a 75% cable penetration rate. Investing in Television: Television 2000 Market Report at 89.
[5] See, e.g., UPN: AOL abuses its cable power, USA Today (July 5, 2001).

the costs of developing station content focused specifically at the Syracuse market. Additionally, instead of obtaining compensation from VTG to help keep cable rates down, Time Warner's decision to import WSBK will likely cause cable rates to rise in the near future to defray the compulsory copyright and associated fees incurred by importing WSBK.[6]

Discussion

VTG and UPN's struggles against Time Warner represent the exact situation the Commission's network non-duplication rule was meant to prevent. "[W]hat [the network non-duplication] rules protect is the local advertising and public service announcements within and adjacent to network programming. . . . The main purpose and effect is to allow the local affiliates to protect their revenues in order to make them better able to fulfill their responsibilities as licensees of the Commission."[7] Further, the "network non-duplication rule was originally designed to permit the formation and continuation of broadcast networks. There is evidence that importation of duplicating network signals can have severe adverse effects on a station's audience."[8]

Here, UPN, as a relatively new broadcast network, has to rely on low-power television stations in markets such as Syracuse to acquire a local voice so that it may compete on equal footing with other local network affiliates. By not extending the protection of the network non-duplication rule to all stations, broadcast networks that must rely on low-power television stations to reach new markets will continue to see their

[6] It should be noted that an Order granting the rule changes requested herein would not require Time Warner to carry WAWA-LP. This Petition does not seek to establish any new cable carriage rules.
[7] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 48.
[8] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 117.

efforts to establish local affiliate stations jeopardized by the importation of distant superstations.

The reasons why the network non-duplication rule was enacted in 1988 are equally valid for all stations, not just full-power stations, and the Commission has already recognized this fact. "[T]he private organization of networks is an efficient method of doing business, and that it is in the public interest to allow enforcement of reasonable exclusivity to support that method of distribution."[9] "We have also determined that, similar to syndicated programming, the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-duplication protection."[10] Indeed, the Commission has acknowledged that low-power television stations "can be expected to have the same basic need for and interest in program exclusivity as full service stations."[11] The time has come for the Commission to resolve this unfinished business and provide all broadcast stations with equal protection from the exclusivity rules.[12]

The only question the Commission left unresolved in its 1988 Further Notice of Proposed Rulemaking that proposed to extend the program exclusivity rules to all stations was whether low-power stations "should be afforded the same degree of geographic exclusivity protection as full service stations."[13] VTG strongly urges the Commission to provide all stations the same degree of geographic exclusivity protection. Broadcast

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[9] Id. at ¶ 116.
[10] Id. at ¶ 118.
[11] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 6171 (1988) at ¶ 44.
[12] While the primary thrust of this Petition focuses on the network non-duplication rule, VTG believes its arguments herein apply equally to the network and non-network territorial exclusivity and syndicated exclusivity rules that have also remained unacted upon by the Commission since 1988. Accordingly, VTG requests that the Commission address them in its Notice of Proposed Rulemaking.
[13] Id. at ¶ 44.

networks have a vested interest in maximizing their coverage and, accordingly, will provide exclusivity to an affiliate only when it serves that purpose. As noted earlier, "the contractual relationship between a network and its affiliates, rather than the Commission's rules, is the appropriate determinant of the extent of non-duplication protection."[14] Market forces, rather than abstact mileage constraints, are more efficient in determining proper geographic restrictions.

Conclusion

For the aforementioned reasons, VTG respectfully urges the Commission to revise its program exclusivity rules, including its network and non-network territorial exclusivity, syndicated exclusivity, and network non-duplication protection rules, so that all television broadcast stations (full, low-power, class A, and noncommercial stations) are entitled to bargain for and exercise program exclusivity against other broadcast stations and cable systems.

Respectfully submitted,

Venture Technologies Group, LLC

By: _____

Paul Kopin
President

Dated October 23, 2001

[14] In the Matter of Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299 (1988) at ¶ 118.

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From …

VENTURE TECHNOLOGIES GROUP, LLC

…and Thank You for Your Comments

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